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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9 JUSTIN FREGOSI,

10 Plaintiff,

11 v.

12 DEPARTMENT OF HEALTH AND  
13 HUMAN SERVICES, et al.,

14 Defendants.

CASE NO. 3:18-cv-5440-RJB

ORDER ON DEFENDANTS'  
MOTION FOR A MORE  
DEFINITE STATEMENT

15 This matter comes before the Court on Defendants' Motion for a More Definite  
16 Statement. Dkt. 11. The Court has considered the pleadings filed regarding the motion and the  
17 remainder of the record herein.

18 On June 4, 2018, Plaintiff filed this case, moved to proceed in forma pauperis ("IFP"),  
19 and provided a proposed complaint. Dkt. 1 and 1-1. Plaintiff's application for IFP was granted.  
20 Dkt. 3. Defendants now move the Court to order Plaintiff to file an amended complaint that  
21 provides a more definite statement of the facts of the case and his claims for relief. Dkt. 11.

22 Plaintiff's Complaint is somewhat difficult to follow. In his "Statement of Facts,"  
23 attached to the Complaint, Plaintiff does assert, in part, that the Defendants violated his due  
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1 process rights when Christie Dotson and Jamie Young, both social workers, testified in state  
2 court that Plaintiff had a prior child abuse conviction which resulted in his children being placed  
3 in foster care. Dkt. 4, at 7-8. Plaintiff claims that he had no such conviction, and while one of  
4 his children was in foster care, the child was abused. Dkt. 4, at 8. Plaintiff's Complaint is fairly  
5 hard to understand, but he also refers to other federal statutes and state law claims. Dkt. 4.  
6 Plaintiff's Complaint states that he seeks damages for himself and for his children. *Id.*

7 **STANDARD ON MOTION FOR A MORE DEFINITE STATEMENT.** Fed. R. Civ.  
8 P. 12 (e) provides:

9 A party may move for a more definite statement of a pleading to which a  
10 responsive pleading is allowed but which is so vague or ambiguous that the party  
11 cannot reasonably prepare a response. The motion must be made before filing a  
12 responsive pleading and must point out the defects complained of and the details  
13 desired. If the court orders a more definite statement and the order is not obeyed  
14 within 14 days after notice of the order or within the time the court sets, the court  
15 may strike the pleading or issue any other appropriate order.

16 **MOTION FOR A MORE DEFINITE STATEMENT.** In their motion, Defendants  
17 argue that Plaintiff's Complaint is vague and that they are left to guess which constitutional  
18 amendments are being alleged as violated. Dkt. 11. They note that the Complaint "makes  
19 reference to 28 U.S.C. Code 4101 as the federal statute for his jurisdictional basis to bring this  
20 action." *Id.* (The portion of the U.S. Code cited is the definition section of The Securing the  
21 Protection of our Enduring and Established Constitutional Heritage Act, which provides that a  
22 U.S. "domestic court 'shall not recognize or enforce a foreign [country's] judgment for  
23 defamation' unless it satisfies both First Amendment and due process considerations." *See Trout*  
24 *Point Lodge, Ltd. v. Handshoe*, 729 F.3d 481, 487 (5th Cir. 2013)(Citing 28 U.S.C. § 4102). It  
does not appear to apply in any way here). Defendants assert that his declaration of facts  
Plaintiff "cites a number of different cases and different constitutional amendments," but it is

unclear upon which facts those claims are based. *Id.* They assert that although he refers to DSHS social worker Christine Dotson in his declaration of facts, she isn't listed as a defendant in the caption of the Complaint. *Id.* The Defendants note that although Plaintiff seeks damages for his children, they are not included as Plaintiffs. *Id.*

**DECISION ON MOTION FOR A MORE DEFINITE STATEMENT.** Defendants' Motion for a More Definite Statement (Dkt. 11) should be granted. The Defendants have shown that the Plaintiff's Complaint is so vague and ambiguous that it is difficult for them to formulate a response. Further, Plaintiff failed to respond to the motion. Under Local Rule W.D. Wash. 7(b)(2), "[e]xcept for motions for summary judgment, if a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit."

Accordingly, on or before August 17, 2018, Plaintiff should be ordered to file an amended complaint which follows the Federal Rules of Civil Procedure, including Fed. R. Civ. P. 10, "Form of Pleadings," which provides:

(a) Caption; Names of Parties. Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7 (a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence--and each defense other than a denial--must be stated in a separate count or defense.

(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

Further, Plaintiff should follow Rule 8, including 8 (a)(2), which provides that a complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Plaintiff should plainly state what happened and what claims he is making as a result. Plaintiff should also refer to the remaining federal rules and the Local Rules of the Western District of Washington for guidance. Even though he is acting pro se, he is expected to follow all the federal and local rules. Plaintiff should be aware that “an amended complaint supersedes the original, the latter being treated thereafter as non-existent.” *Ramirez v. Cty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015)(*internal citation and quotation marks omitted*).

Plaintiff is notified that failure to respond to this order by filing an amended complaint may result in dismissal of his case.

#### **ORDER**

- Defendants’ Motion for a More Definite Statement (Dkt. 11) **IS GRANTED**; and
- On or before **August 17, 2018**, Plaintiff should file his amended complaint, if any and Plaintiff should be aware that failure to do so may result in dismissal of the case.

The Clerk is directed to send Plaintiff a summons form and uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party’s last known address.

Dated this 30<sup>th</sup> day of July, 2018.



ROBERT J. BRYAN  
United States District Judge